

Fowler Property Scrapyard, Kinston, Lenoir County, NC

POLREP #6, 11/20/02

ACTIONS TAKEN

Refer to initial Polrep dated August 26, 2002 for background information.

November 21, thru November 25, 2002

OSC removed site cleanup personnel to subject site to commence cleanup operations. Operations included prepping containers for disposal. Two rolloff boxes (20yds) were moved for site debris, discarded PPE and contaminated soil. EEM packaged all drums and pails. EEM decontaminated concrete pad where drums had been staged. Sump/catch basin was cleaned out. Contaminated material from sump was placed in a 55 gallon drum. This material will be sampled and disposed of pending analytical.

November 26, 2002

Transportation of subject hazardous substances/haz waste was shipped to Chemtron, Avon, Ohio. All materials were placed on one truck. These materials included the following:

- Drum 1 - 85 gal overpack, flammable liquid
- Drum 2 - 85 gal OP, containing 36, 1gallon cans and 36 1qt. cans of FL
- Drum 3 - same as #2
- Drum 4 - 85 gal OP containing 8, 5gallon cans of FL,
- Drum 5 - 85 gal OP containing 35 qt cans and 24 gal cans of FL,
- Drum 6 - 85 gal OP containing 45 1gal cans of FL,
- Drum 7 - 55 gal OP containing flamm. aerosol cans,
- Drum 8 - Same as #6,
- Drum 9 - Same as #1,
- Drum 10 - 85 gal OP containing 6, 5 gal containers of FL,
- Drum 11 - 85 gal OP containing 6, 5 gal and 17, 1 gal of FL,
- Drum 12 - same as #10,
- Drum 13 - 85 gal OP containing 8, 5 gal of FL,
- Drum 14 - 85 gal OP containing 1, 55gal of FL,
- Drum 15 - 85 gal OP containing 6, 5gal of FL,
- Drum 16 - 85 gal OP containing 11, 1gal of FL,
- Drum 17 - 85 gal OP containing 10, 1gal of FL,
- Pallet 18 - 18, 5 gal pails shrink wrapped of FL,
- Drum 19 - 55 gal drum, semi-solid of FL, trichloroethane
- Drum 20 - 85 gal OP, solvent, 8, 5gal pails
- Pallet 21 - 24, 5gal pails on pallet of CL,
- Pallet 22 - 25 of same
- Pallet 23 - 24 of same
- Pallet 24 - 12 of same
- Pallet 25 - 24 of same
- Pallet 26 - 22 of same
- Pallet 27 - 880, 14.5oz of FL
- Pallet 28 - 9, 1gal cans of paint related material, FL

Drums 29,30,31,32 - 85 gal Ops contain qt and gal cans of FL
Pallet 33 - 25, 5gal pails phosphoric acid
Pallet 34 - 36, 5gal pails phosphoric acid
Pallet 35 - 19, 5 gal pails phosphoric acid
Pallet 36 thru 39, 85, 5gal pails phosphoric acid and other CL,
Drum 37 - 55 gal drum ethanolamine, 2-butoxyethanol
Drum 38 - 1 gal pail of pentachlorophenol

FUTURE ACTIONS

OSC and EEM will remove after Thanksgiving to dispose of rolloff containing debris, soils, and waste PPE. Also one drum of sump solids to be sampled and tested for off-site disposal.

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ACTIONS TAKEN

Refer to initial Polrep dated August 26, 2002 for background information.

November 19, 2002

Federal District Court Judge issued warrant for site access to EPA to initiate and complete removal action. Work to commence on November 20, 2002. EPA has issued purchase orders to Eastern Environmental Management, Rocky Mount for site labor and Chemtron, Avon, Ohio for disposal.

FUTURE ACTIONS

Commencement of CERCLA emergency removal action followed by CWA/OPA oil removal.

POLREP #5, 10/02/02

ACTIONS TAKEN

September 20, 2002

Failure to comply with 311(c) order and amendment as described in previous POLREP.

Responsible party failed to comply with Section VI, Paragraph 1.B.3, Work to be Performed: Completion date for sampling and characterization of all containers is Sept. 20 2002. Containerization of obviously contaminated soils beneath and around the five gallon and 55 gallon containers that had been leaking and were overpacked. Surface area and depth to be determined by OSC in the field. This work shall also be completed by Sept. 20, 2002. In addition the responsible party failed to comply with Section VI, Paragraph 1.B.4, Work to be Performed: Completion date for removal and containerization of liquids and sludge bottoms from the tanks into transportable containers is September 20, 2002. Decommissioning of the tanks themselves via blank flanging of the supply lines to ensure that tanks can no longer be used to store petroleum products shall also be completed by September 20, 2002.

September 30, 2002

Failure to comply with 311(c) order and amendment as described in previous POLREP.

Responsible Party failed to comply with Section VI, Paragraph 1.B.8, Work to be Performed: Completion date of shipment of all containers to permitted disposal/recycle/reuse facility, including the material removed from the tanks and contaminated soils is September 30, 2002.

FUTURE ACTIONS

Issuance of demand letter and CERCLA Order for Site Access (Section 104(e)(5)), so that EPA can complete subject removal of CERCLA and CWA hazardous substances.

POLREP #4, 09/05/02-09/15/02

ACTIONS TAKEN

September 10, 2002

EPA OSC ammended original 311(c) order to reflect specified due dates and other changes.

Changes include the removal of Section VI, Para. 1.B.5, removal of tires is no longer required. DENR Division of Solid Waste has indicated that these tires are stored properly.

Section VI, Paragraph 1.B.3, Work to be Performed: Completion date for sampling and characterization of all containers is Sept. 20 2002. Also the following should be added. Containerization of obviously contaminated soils beneath and around the five gallon and 55 gallon containers that had been leaking and were overpacked. Surface area and depth to be determined by OSC in the field. This work shall also be completed by Sept. 20, 2002.

Section VI, Paragraph 1.B.4, Work to be Performed: Completion date for removal and containerization of liquids and sludge bottoms from the tanks into transportable containers is September 20, 2002. Decommissioning of the tanks themselves via blank flanging of the supply lines to ensure that tanks can no longer be used to store petroleum products shall also be completed by September 20, 2002.

Section VI, Paragraph 1.B.8, Work to be Performed: Completion date of shipment of all containers to permitted disposal/recycle/reuse facility, including the material removed from the tanks and contaminated soils is September 30, 2002.

This ammendment was faxed to Keith Fowler on September 10, 2002 with the effective date being September 10, 2002.

September 11, 2002

EPA EAD issued a demand letter to Mr. Fowler, requiring adherance to original 311(c) order and potential for civil enforcement action as a result of referral to US Department of Justice.

September 13, 2002

Notification regarding the status of the RP's intent to comply with either the original or ammended order has not been received as of this date.

FUTURE ACTIONS

Await notification from RP, Mr. Keith Fowler.

POLREP #3, 09/08/02

ACTIONS TAKEN

September 04, 2002

OSC met with RP and RP's contractor (Eastern Environmental) to discuss disposal strategy. RP verbally agreed to dispose of overpacked drums (18 drums containing the leaking containers previously overpacked) as haz waste. Contractor brought vendor (Chemtron Inc) a CERCLA approved TSD facility, from Ohio, to provide cost estimate for the disposal of only the 18 overpacked drums. Chemtron provided a verbal estimate of \$6,500. The RP refused to acknowledge the number until it was e-mailed to him at his office in Richmond. No other work was performed on site.

September 05, 2002

OSC met again with RP and contractor. RP indicated that he had not yet been to his office therefore was unable to review the estimate. He indicated that he wanted to look at other options for these 18 containers. The OSC explained that he would have to be communicative regarding his intentions not just for the 18 overpacked drums but for the remaining 200 plus containers. The RP indicated that information is confidential and that if he was to tell me that I would not be able to reveal the info to others. The OSC differed with this statement and once again explained that this material has to be disposed of as soon as possible. The RP promised to provide a schedule for disposal/reuse/transport to his office in Richmond by 9/7. The OSC provided his cell phone number to RP.

Investigation of the tanks revealed the following:

Tank 1 - (300,000gal cap) approx. 7 inches of clean diesel

Tank 2 - (10,000 galcap) 7 inches of water and sludge

Tank 3 - " 4 inches " "

Tank 4 - " 3 inches " "

Tank 5 - " Dry

Tank 6 - " 1 inch " "

Tank 7 - " 1.5inches " "

The RP agreed to provide volume estimates, by 9/7, of all this material and than to remove and dispose of all this material as part of this action.

September 06, 2002

No work on site and no communication from the RP.

September 07, 2002

No communication from RP to OSC as per his promise and commitment, not even a call requesting additional time.

FUTURE ACTIONS

The OSC requests EAD assistance regarding enforcement of this Order. It is the OSC's feeling that the RP has no intention of complying fully with the Order. It has been violated numerous times with the most recent being his lack of communication regarding his intent towards disposal of the material.

Other times where the Order has not been complied with:

1. VI. A. Notice of intent to comply, RP has not notified in writing of his intent to comply .
2. RP has failed to provide written reports to OSC on a weekly basis as per B.9.
3. RP has not provided the name of a Point of Contact in violation of 2.1. B.
4. RP has failed to provide site access to EPA and its contractor so that an action can be taken to remove the threat posed by the drums and other containers of flammable liquids and corrosive liquids should it be determined that the RP is unable to proceed with the removal or the OSC determines that he is acting in a recalcitrant manner.

The OSC has determined that the RP is acting in a defiant manner. He continues to refuse to communicate his intentions, does not communicate with his contractor and has indicated that all the material will be taken to his temperature controlled facility in Richmond, Va. (in direct violation of the Order).

POLREP #, 08/24/02-09/04/02

August 27, 2002

Responsible party, Mr. James Keith Fowler received verbal notification of the OSC's intention to issue a 311(c) order at 1645hrs. Mr. Fowler was advised that he needed to take immediate action to abate the leaking containers of oil and hazardous substances at his facility at 501 Abbott St., Kinston, NC. Mr. Fowler was ordered to hire environmental cleanup contractor to mobilize to site on August 29, 2002 at 1000hrs to meet with OSC to commence activities. Unfortunately OSC was unable to provide Mr. Fowler with names of at least three cleanup contractors due to Mr. Fowler's belligerent and bellicose tirade. Mr. Fowler was also notified that the subject 311(c) order would be emailed to him the following day.

August 28, 2002

OSC electronically mailed subject 311(c) order to Mr. Fowler at approximately 1700hrs. EPA - EAD attorney assisted OSC by providing Mr. Fowler with the names of at least three environmental cleanup contractors for response to site for August 29, 2002.

August 29, 2002

At 1020 hrs. Mr. Fowler arrives at site to meet OSC. In attendance were representatives from NCDENR, DWM, DWQ and the City of Kinston Fire and Police Departments. Mr. Fowler was provided with a brief overview of the mandates of the order and asked of the status of his contractor to commence the stabilization of the site. Mr. Fowler indicated that he had yet to contact a contractor and would need some time to do so. The OSC then asked permission (at approx. 1030hrs) to access the site with EPA contractor (EPA ERRS contractor had been mobilized and were awaiting direction by OSC). Mr. Fowler denied access. Mr. Fowler was told that he would be in violation of the Order by denying access. He was again reminded that an EPA contractor was nearby with personnel and equipment to commence stabilization activities. By disallowing access to the OSC and its contractor to commence site stabilization activities, Mr. Fowler was in violation of Section 3.A of 311(c) Order.

Weather forecasts for the remainder of the day was for rain and heavy rain with thunderstorms. OSC (at the request of EPA - EAD on August 28, 2002) contacted EAD attorney and left message at approx. 1045hrs. for return call. OSC contacted Section Chief for assistance regarding request by EAD for "regroup" conference call if access was denied. EAD section chief returned call at approx. 1145hrs to take info and ask OSC what OSC wanted. OSC requested that EAD assist OSC with "access to site" support due to leaking containers and pending foul weather. At approximately 1245 hrs. EPA-EAD staff attorney returned call to discuss situation and ask OSC what OSC wanted. Another call between OSC and EAD occurred again around 1500 - 1530 hrs. wherein OSC was told that consultation with HQ revealed that an access order may take 3 days, due to required "consult period" between EPA and RP. OSC again requested that process be initiated. OSC needs unfettered site access for the duration of this removal.

At approximately 1600 hrs. cleanup contractor Eastern Environmental, Rocky Mount, NC, hired by RP arrives on scene. Overpacking of leaking containers was initiated. Due to lightning and rain, work was terminated around 1830 hrs. Un packaged containers were tarped and plans were made between OSC, RP and contractor to return to site on August 30 in the AM. Weather forecasts for August 30 is rain and heavy rain.

FUTURE ACTIONS

Continue overpacking of containers and completion of 311(c) order. Refer to Order for specification of activities. It should be noted that consultation with DENR Division of Solid Waste revealed that the storage of the approx. 1000 tires (removal of such are included in this Order) is legitimate and completely within the confines of their regulations. Therefore this removal requirement, Section B.5, of Order is rescinded.

Special POLREP, 8/29/02

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POLREP #1, 08/26/02

ACTIONS TAKEN

On 16 August 2002, NCDENR Division of Waste Management (DWM) personnel notified EPA of subject site owned by a Mr. Keith Fowler. DWM was notified of this site by the Fire Marshall, Kinston, NC. An Administrative Inspection Warrant was obtained so that the Fire Marshall and DWM could perform a site inspection on 16 Aug 2002.

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On 26 Aug 2002 another Administrative Inspection Warrant for further inspection of site hazardous materials was obtained by the Fire Marshall. EPA OSC accompanied the Fire Marshall on this inspection.

The Removal Site Evaluation revealed the presence of 10 pallets of flammable and corrosive liquids. An approximate total of 1000 of these containers was noted. These containers ranged in size from 1 pint to 5 gallon and a number of 55 gallon drums, all were labelled as either paint, thinner, corrosive and flammable liquids or similar. There was no clear indication on the containers as to their contents due to the weatherization of such. However many containers had either flammable liquid and/or corrosive liquid labels. A number of the containers were leaking what appeared to be an oil substance. They were staged outside, without regard to compatibility with each other or without regard to the rain and sun. Many of these containers were leaking their contents onto the ground or were in advanced stages of degradation. A catch basin/storm drain, presumably carrying surface water runoff into a nearby ditch line, is located directly beneath the pallets of hazardous substances. The threat for an offsite release of CERCLA/CWA hazardous substances is imminent and substantial.

Some of the pallets were stacked on top of each other causing stress to the pails below. A black tarp was partially covering these containers. Most of the tarp had been degraded or torn by the elements. Most of the containers had DOD - DRMO labelling with lot numbers and references to the Cherry Point NAS facility or others.

In addition to these containers, a number of large fuel/oil storage tanks was noted. Approximately 6 such tanks were noted, possibly containing oil, diesel fuel or gasoline or at a minimum, sludge bottoms. There did not appear to be any secondary containment or other means to prevent a release as required by SPCC regs. 40CFR112.7. In addition the site appears to be abandoned and is heavily overgrown with vegetation. A small 6 foot chain link fence with locked gates surrounds the perimeter of the site.

The site is surrounded by commercial facilities and residences. The commercial facilities include a fuel oil distributorship. The Neuse River is within 100 yards downgradient of the site. The site is located in downtown Kinston, a city of some 50,000 people.

Mr. Keith Fowler was not present during this investigation. However Mr. Russell Rosso (Rosso Property Site, Dover, NC), drove up during this inspection. Mr. Rosso explained that he was looking to speak with Mr. Fowler regarding his removal of similar substances at his scrapyard in Dover, NC. This site is presently under assessment as well by this OSC. Mr. Rosso was adamant that much of the hazardous material at his property in Dover is owned by Fowler and that he is merely storing it for him.

A gamma ray survey using a micro R meter detected no greater than background levels of gamma radiation throughout the site.

Additional site visits are necessary to adequately evaluate the threat posed by these substances.

IV FUTURE ACTIONS

A site visit is planned for 29 Aug 02 with Mr. Keith Fowler pending his permission under an Access Agreement. Mr. Fowler has yet to approve the agreement. Other enforcement orders maybe necessary for site access to remove this imminent and substantial threat of a release.